United States Supreme Court

October Term, 1919.

GUISEPPE CAVALLARO,
Libellant-Petitioner.

—against—

Steamship "CARLO POMA," her engines, boilers, etc.,
Respondent.

NOTICE OF MOTION.

To:
CHARLES C. BURLINGHAM and VAN VECHTEN VEEDER, Counsel for the Respondent.

PLEASE TAKE NOTICE That we shall move before the Supreme Court of the United States on Monday the 10th day of November next at 12 o'clock noon, to advance the argument of the above entitled cause to a day certain, and that in support of such motion the annexed affidavit of Oscar R. Houston will be submitted.

Dated, November 6, 1919.

Yours, etc.,

D. ROGER ENGLAR and
OSCAR R. HOUSTON,
Counsel for Petitioner.

AFFIDAVIT OF OSCAR R. HOUSTON.

SUPREME COURT OF THE UNITED STATES.

GUISEPPE CAVALLARO,
Libellant-Petitioner,

—against—

Steamship "CARLO POMA," her engines, boilers, etc.,
Respondent.

State of New York,
County of New York—ss.:

OSCAR R. HOUSTON, being duly sworn, says:

1. I am a member of the bar of the Supreme Court of the United States and one of the counsel of record for the petitioner herein.

2. A writ of certiorari directed to the Circuit Court of Appeals, for the Second Circuit, was duly issued out of this Court in this action on the 24th day of October, 1919, and the return thereto has been duly filed on the 7th day of November, 1919.

3. This motion to advance the argument is made in order that the present case may be heard by this Court while the Court still has un-

der consideration the case of the "Gleneden," which was argued on the 7th of January, 1919, the docket title of which is "*In the Matter of the Petition of James Thomson Muir, Master of the British Admiralty Transport 'Gleneden,' for a Writ of Prohibition, and/or a Writ of Mandamus, against the Honorable Thomas Ires Chatfield, United States District Judge* (No. 28 Original—October Term, 1918.)" This case, though argued on January 7th, 1919, has not yet been decided by this Court.

4. The present case, the "Carlo Poma," and the "Gleneden" case, while not identical in their facts, present very similar questions, and we respectfully submit that it is in the public interest that the present case should be argued before the "Gleneden" is finally disposed of.

5. In the present case the "Caro Poma" was the property of the Italian State Railways, which is a department of the Italian Government, and was operated by a crew employed and paid by such department, but was engaged as a common carrier for hire carrying goods from Italy to New York. Part of her cargo was delivered in a damaged condition, and the owners of the cargo libeled the vessel in the Southern District of New York. The District Court for the Southern District of New York, upon receiving a suggestion of the above facts from the

Italian Ambassador, unsupported by any action by the United States Government, refused to entertain jurisdiction and ordered the release of the vessel.

6. The "Gleneden" was a British vessel, privately owned, but under requisition by the British Government and loaded wheat at New York to be carried to England for the British Government. She was operated by a crew who were apparently employed and paid by the private owner of the vessel. A libel for collision was filed against her in the Eastern District of New York. A suggestion was then filed by Messrs. Frederic R. Coudert and Howard Thayer Kingsbury, purporting to act for the British Embassy, setting out the above facts and asking for the release of the vessel. The District Judge for the Eastern District of New York retained jurisdiction and refused to release the vessel. A petition for prohibition and/or mandamus was thereupon filed in this Court.

In both cases the question is raised of the sufficiency of a mere suggestion filed by representatives of a foreign government not supported by the Department of Justice or any other representative of the United States. Both cases also present the question of the public policy of the United States toward the new class of vessels owned and operated by or under the direction of foreign governments, but, never-

theless, engaged in ordinary merchant trade. These questions have never been passed upon by this Court, and it is respectfully submitted that it is in the interest of justice that all cases presenting these points and now pending in this Court should be argued before any one of them is decided.

O. R. HOUSTON.

Subscribed and sworn to before me this
6th day of November, 1919.

CORNING G. MCKENNEE,
Notary Public,
(Seal) Queens County.
Certificate filed, New York County.